

The Deaccession Dilemma: Laws, Ethics, and Actions

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Bellefonte, Pennsylvania

Deaccessioning

- Traditional practice
- Controversial
- Usually legal
- Not always ethical

A collection in need of
deaccessioning



Participant Poll

- What kind of museum do you work in?
 - Art
 - History
 - Historic site
 - Science
 - Other (please specify)

The Potter Museum,
Bramber, England



What is deaccessioning?

- Permanent removal of an object from the collection
- Only accessioned objects can be deaccessioned
- Best control = good plans and policies
 - Collections Plan
 - Accession Policy



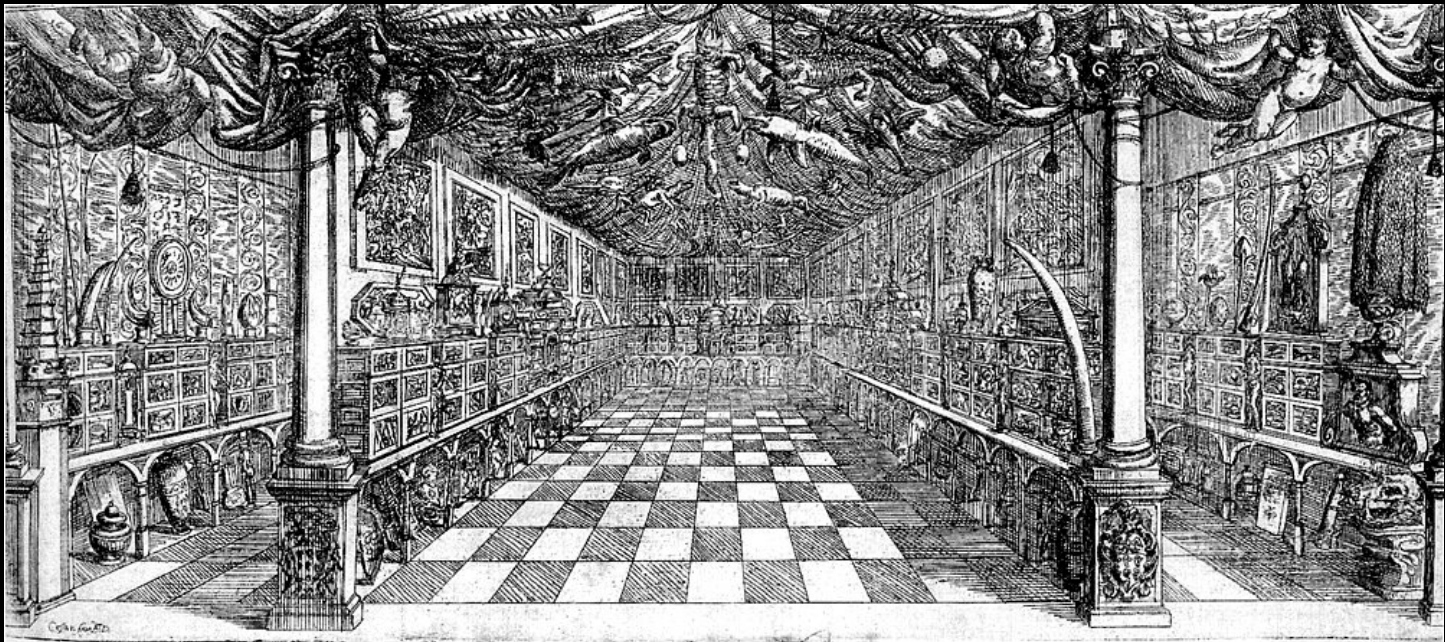
What is disposal?

- What happens to the object after deaccessioning
- Transfer to another non-profit
- Sale
- Destruction
- Can be controversial



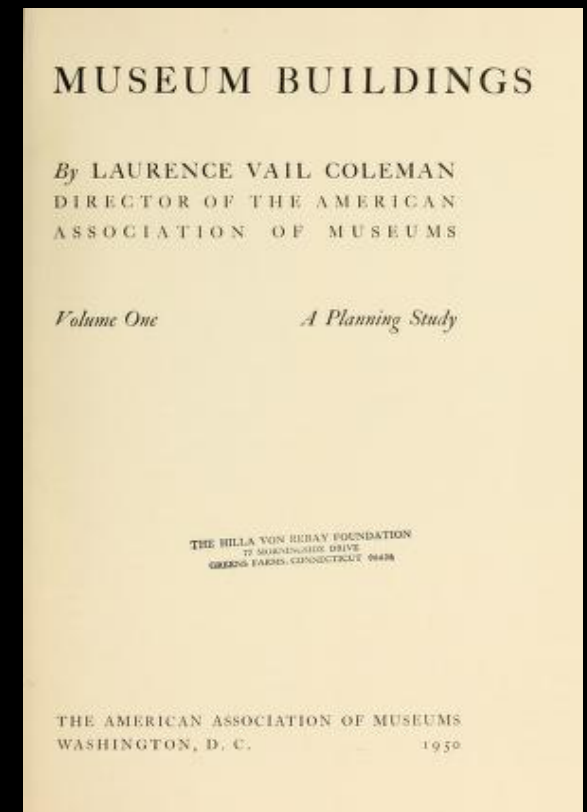
Historical perspective

- Deaccessioning is as old as collecting
- The term first appeared in print early 1970s
- Attitudes have changed over time



Historical perspective

- “On occasion, worthless material may be accepted and later thrown away rather than give offense by refusing it.”
 - Laurence Vail Coleman,
Secretary of the AAM,
1927



Historical perspective

- “A museum, no more than an individual, cannot constantly ingest without occasionally excreting.”

— Thomas Messer



Thomas Messer (1920-2013)

Historical perspective

- Limited use of proceeds to “...the acquisition of collections”
 - AAM Code of Ethics, 1991
- Proceeds only to be used for “...the acquisition or direct care of collections”
 - AAM Code of Ethics, 1994

Historical perspective

- Ethics Commission did not define “direct care”
 - Hiring a conservator?
 - Fixing a leak?
 - Building a better gallery?
- AAM Direct Care Task Force (May 2015)

Participant Poll

- What do you think “direct care of collections” includes?



Earth and Mineral Sciences
Museum & Art Gallery,
Penn State University

Historical perspective

- Cultural differences towards deaccessioning
- European museums more reluctant to deaccession
- Nearly unheard of in Latin America

Museum studies class,
Universidad Nacional de
Colombia



Historical perspective

- “...there must always be a strong presumption against the disposal of objects to which a museum has assumed formal title”
 - ICOM Code of Ethics
- “Museums must remain free to improve their collections through selective disposal...and intentionally to sacrifice objects for well-considered... purposes”
 - AAM Code of Ethics

Historical perspective

- 49,700 hits in 0.48 seconds
- Links to deaccessioning policies
- Articles about deaccessioning
- Links to news stories about deaccessioning controversies
- Works of art have higher fair market value

Reasons and context for deaccessioning

- Critical tool for managing collections
- Collections are dynamic, not static
- Collections grow and change
- Collections should be reviewed and revised
- Proper collections care = careful use of resources

Museums are accountable...

- Acquisition
- Conservation
- Management

The artist in His Museum, 1822
self-portrait by Charles Willson
Peale (1741-1827)



Museums are accountable...

1. Retention of all objects is expensive
2. Deaccessioning may generate funds to advance the mission
3. Deaccessioning may better serve the museum community

— Stephen Weil (1987)



Reasons for deaccessioning

- Safety
 - Unsafe to maintain
 - Too expensive to safely maintain
 - Chemical or physical deterioration
 - Source of radiation
 - Contains asbestos

Asbestos found in museum
collection



Reasons for deaccessioning

- Monetary
 - To gain proceeds from sale
 - Proceeds should be used for acquisition and direct care
 - Proceeds should not be used to cover budget shortfalls

Painting conservation,
Cuzco, Peru



Reasons for deaccessioning

- Improve the collection
 - Refine, upgrade, focus collection
 - Transfer objects to another institution
 - Duplicates
 - Copies
 - Substandard objects
 - Objects that have lost value



Beatty Biodiversity Centre, University of
British Columbia, Vancouver

Reasons for deaccessioning

- Better serve the discipline
 - Exchange, trade, gift to sister institution
 - To promote access and use
 - Common in herbariums and natural history museums

Mining lamps, Earth and
Mineral Sciences Museum
& Art Gallery



Reasons for deaccessioning

- Restitution and repatriation
 - Return to owners
 - Stolen objects
 - Illegally acquired objects
 - Nazi-era art works
 - NAGPRA (Native American Graves Protection and Repatriation Act) materials

University of British Columbia Museum of Anthropology, Vancouver



Reasons for deaccessioning

- Scope
 - Irrelevant objects
 - Changes in scope



Reasons for deaccessioning

- No longer relevant
 - Not used
 - Loss of documentation
 - Inauthentic
 - Deterioration



Reasons for deaccessioning

- Too expensive to keep
 - Storage costs
 - Security costs
 - Preservation costs
 - Housing costs
 - Safety
 - Need expensive conservation

Field Museum, Chicago



Participant Poll

- Who owns your museum's collection?

Institute for Southern
Thai Studies Folklore
Museum, Ko Yo Island



Who owns the collection?

- Who owns the museum?
- Detroit Institute of Arts
 - City of Detroit bankruptcy
 - Collection value \$2.8 to \$4.6 billion
 - City owned the collection

Detroit Institute of Arts



Who owns the collection?

- Museum organized as trust with board of directors?
 - Museum probably owns its collection
- City, county, state, college or university?
 - Museum probably does not own its collection

Federal and state laws

- No laws prohibit the sale of objects from museum collections
 - Few exceptions
 - In general, it is legal to deaccession and dispose of objects from the collection



Federal and state laws

- Exceptions
 - Donor restrictions
 - Non-profit status and trust obligations
 - Bylaws, constitution, policies, mission

Cherry County Historical Society,
Valentine, Nebraska



Donor restrictions

- Precatory restrictions
 - Cannot be deaccessioned
 - Permanently exhibited
 - Returned to donor's heirs
 - Given to another museum

Elgin Marbles, British
Museum, London



Restricted gifts

- Museums should avoid restricted gifts
 - Difficult to comply with
 - May interfere with mission
 - Take time and exhibit space

Mercer Museum, Doylestown,
Pennsylvania



Donor restrictions

- *Cy près* doctrine
 - “as near as possible”
 - When it is not possible to comply with the donor’s intentions
 - Consult an attorney
 - *Example:* Barnes Foundation move

Barnes Foundation,
Philadelphia



Cy près

- Law is evolving
- 49 states have a *Uniform Prudent Management of Institutional Funds Act*
- Common law gives donors a say in how restrictions are enforced
- Consult an attorney familiar with this law in your state

Non-profit status

- Most museums are non-profit
- Trustees have a duty of care
- Trustees have a duty of obedience
- Legal obligation to protect, preserve, and increase the assets of the trust



Non-profit status

- “At the very least, the board should be under obligation to institute policies... designed to further the mission... and demonstrate good-faith efforts to monitor such policy”
- *A Legal Primer on Managing Museum Collections*
- Does “increase the assets” mean sell objects for the highest price?

Bylaws, constitution, policies

- Do not have the force of law
- Can be a factor in legal challenges
- Board must abide by bylaws or constitution
- Board must support the policies



IRS notification

- Deaccession can affect the donor's tax benefit
- Deaccession of a gift within three years must be reported to the IRS
- IRS form 8282



Sources of information

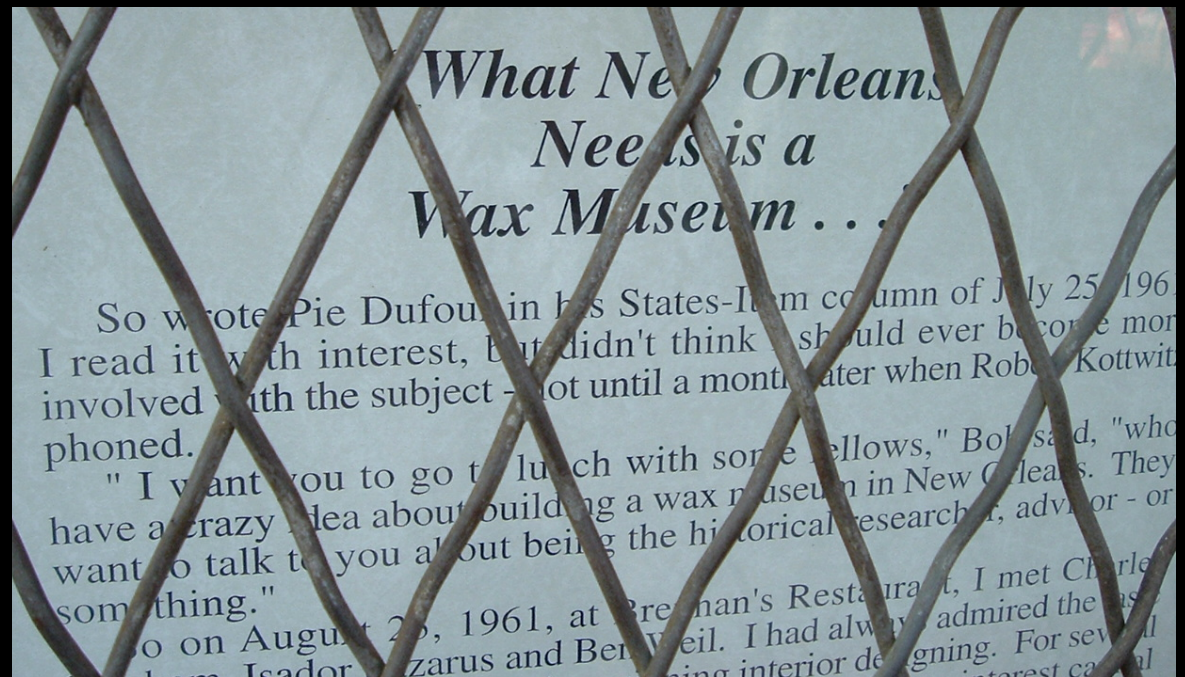
- See handout

If the fire is not in your room.

- 1). Remain in your room.**
- 2). Call the front desk. Dial "0"**
- 3). The desk will advise you of any precautions to be taken.**

Professional standards


- Codes of ethics—see handout
- Ethical standards change
- Ethical standards may differ with type of museum



Keeping objects in the public domain

- Sale may remove objects from public access
- *AAM Collections Exchange Center* experiment
- Public domain may mean smaller profit on sale
- Let museums have first right of refusal

Credibility

- Transparency
 - Maintain collections in the public trust
 - Museums must use their collections in a manner consistent with donor intent and public interest
- 
- A close-up photograph of an ancient Egyptian stone mask, likely a funerary mask, showing the face and headdress. The mask is made of a light-colored stone, possibly limestone, and features large, almond-shaped eyes and a prominent nose. The headdress is visible at the top of the frame.



Indianapolis Museum of Art

Credibility

- Reasons for deaccession and sale
 - Deaccessions as financial emergencies?
 - Poor management by directors and boards



Credibility

- “When a for-profit organization faces a financial crisis, the sale of part of its assets is essentially a matter of business judgment... For a non-profit, the sale of assets can mean ...the disposal of part of its very reason for being”
 - *A Legal Primer on Managing Museum Collections*

Notification of donors

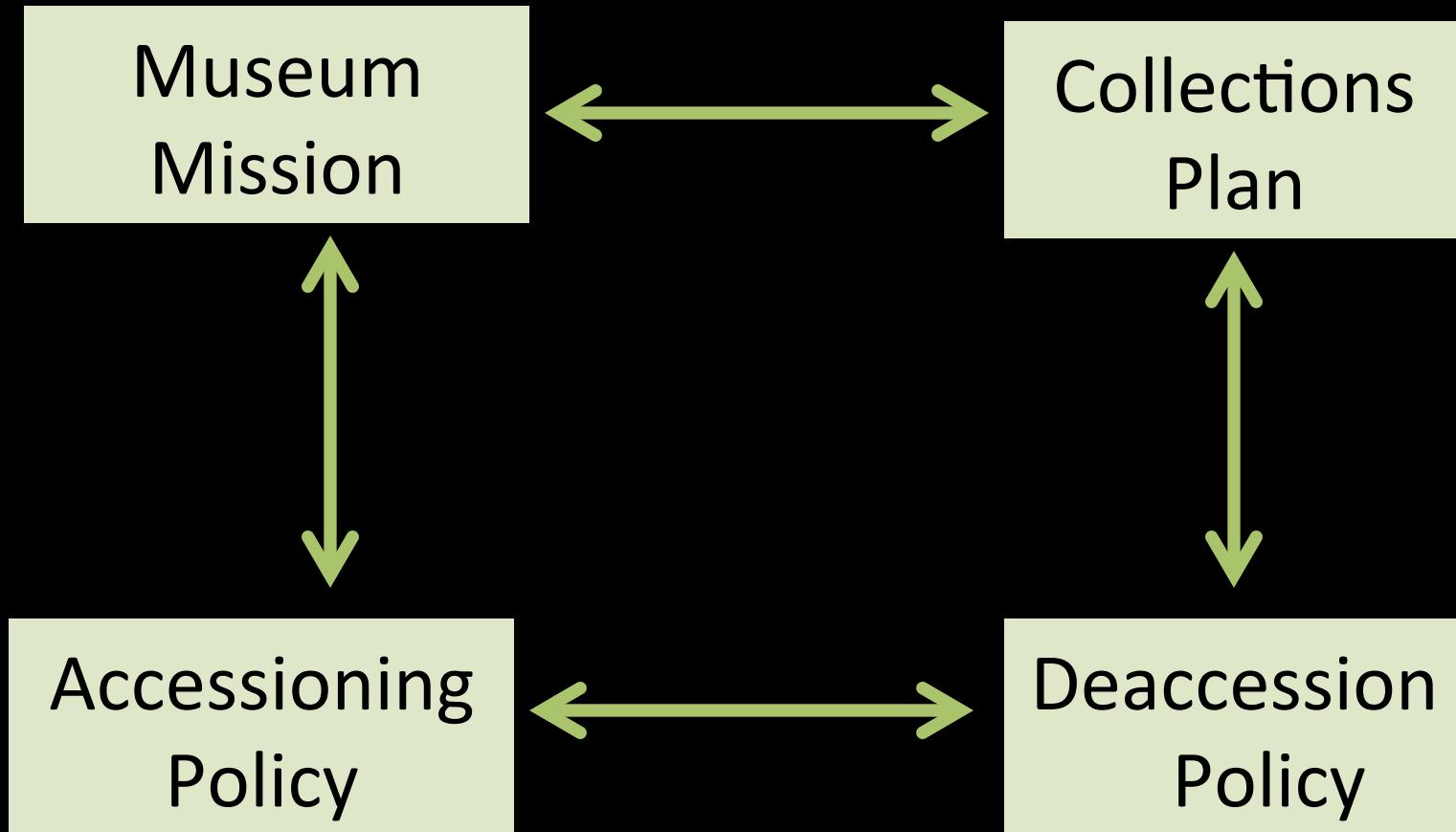
- Notification implies donor still has control or legal interest in a gift
- A gift means complete transfer of ownership
- Notification of donors may weaken credibility with donors and public

Participant Poll

- Does your museum have a deaccession policy?
- If so, do you think the policy is good?



Deaccessioning policy



Deaccessioning policy

- Include procedures
- Standard museum practice
- Approval of governing authority
- Compliance with board's fiduciary duties
- Criteria for deaccessioning
- Responsibility for approval
- Written records

Deaccessioning policy elements

- Purpose
- Adherence to mission
- Comply with the law
- Comply with donor intent
- Documentation of deaccessions
- List of acceptable reasons to deaccession
- Procedural steps

Methods of disposal

- Acceptable
 - Donation to another non-profit
 - Exchange
 - Public programming
 - Repatriation
 - Return to donor
 - Sale
 - Destruction



Methods of disposal

- Unacceptable
 - Sale in museum gift shop
 - Gift or sale to staff member
 - Gift or sale to board member
 - Tossing in the dumpster



Controversies

- Museum collections as piggybanks
- Legal, but unethical
- Reflects badly on the institution
- Monetization of collection objects

Heinrich Hoffman
Museum, Frankfurt



Resisting deaccessioning

- Precatory restrictions
 - May be challenged using *cy près*
- Governance and mission
 - Difficult
 - State Attorney General
- Intended use of proceeds
 - How is money to be spent
 - Internal Revenue Service rules

Fisk University

- Sold 50% interest in Stieglitz collection to Crystal Bridges Museum of American Art
- Challenge based on donor intent
- *Cy près* case
- Collection moves between Arkansas and Tennessee every two years
- Fisk University received \$30 million

Randolph College

- Sell painting from Maier Museum
- College owned the collection
- 1920 student purchase for \$2,500
- Randolph College received \$25.5 million
- Bad publicity, AAMD sanction
- “...semantic transformation from art as ‘education’ to art as commodity”

Brandeis University

- Decision to close Rose Art Museum
- Negative publicity
- Brandies renovated museum



Delaware Art Museum

- Planned sale of art to raise \$30 million
- Debt from facilities expansion
- Bad press
- Sale earned less than \$19 million
- Museum sanctioned by AAMD, lost AAM accreditation

Thank you

